# INDEX


| | Page |
|---|---|
| Opinion below | 1 |
| Question presented | 1 |
| Statutes involved | 2 |
| Statement | 3 |
| Argument | 8 |
| Conclusion | 10 |


## CITATIONS


| | |
|---|---|
| Cases: | |
| *Chelentis* v. *Luckenbach S. S. Co.*, 243 Fed. 536 | 6 |
| *Great Lakes S. S. Co.* v. *Geiger*, 261 Fed. 275 | 6 |
| *Komaridis* v. *Compania Internacional de Vapores*, 1943 A. M. C. 1437 | 8 |
| *Liverpool Steam Co.* v. *Phoenix Ins. Co.*, 129 U. S. 397 | 9, 10 |
| *Martinez* v. *Matson S. S. Co.*, 97 F. 2d 19 | 6 |
| *Nyack, The*, 199 Fed. 383 | 6 |
| *Pacific Mail S. S. Co.* v. *Lucan*, 264 Fed. 938 | 6 |
| *Shapleigh* v. *Mier*, 299 U. S. 468 | 8, 9 |
| *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120 | 9 |
| Statutes: | |
| Geneva Convention of October 6–24, 1936, 54 Stat. 1693, 1697, Article 5 | 9 |
| Panama Commercial Code, English translation: | |
| Article 1216 | 2 |
| Article 1217 | 2 |
| Article 1218 | 3 |
| Article 1219 | 3 |
| Miscellaneous: | |
| Wigmore, *Evidence* (3rd Ed. 1940) §§ 1271, 1953 | 9 |




738307—47

# In the Supreme Court of the United States

OCTOBER TERM, 1946

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NO. 1120

KARL JONSSON, PETITIONER

*v.*

THE UNITED STATES

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the District Court for the Southern District of New York (R. 44–46) is reported at 1946 A. M. C. 120. The opinion of the Circuit Court of Appeals for the Second Circuit (R. 55–57) is reported at 158 F. 2d 682.

### QUESTION PRESENTED

Whether, in a suit for maintenance, cure and wages by a seaman injured aboard a vessel owned by the United States and operated under Panamanian registry, both courts below erred in construing the Panamanian statute under which re-

covery was sought as limiting the seaman's right to wages to the duration of the voyage, a conclusion reached with the aid of the only expert testimony offered.

### STATUTES INVOLVED

The pertinent portions of the English translation of the Panamanian Commercial Code provide:[1]

> *Article 1216.* Any seaman wounded or hurt in the service of the vessel or who may fall ill during the voyage shall be entitled to wages and to proper treatment and care at the expense of the ship.
>
> In case of mutilation he shall be indemnified according to agreement, and in default thereof, to the finding of experts. The expenses of treatment and maintenance shall be for account of the vessel and its cargo if the illness, injury or mutilation should have occurred while in the service of the vessel. If the injuries should be received while fighting in defense of the ship, the expenses and indemnification shall be apportioned *pro rata* amongst the vessel, freight and cargo in the form of general average.
>
> *Article 1217.* A seaman who may become ill or receive injury or mutilation shall be

[1] This translation was received in evidence as an exhibit but, by stipulation, was not printed as part of the record herein (R. 20, 52). It is published as part of the report of the district court opinion herein in 1946 A. M. C. 120.

entitled not only to wages up to the time of his recovery but up to the day on which he shall be fit to return to the port of his enrollment, and shall further be entitled to a reasonable sum for his return expenses.

*Article 1218.* If the sick or injured seaman should be in unfit condition to continue the voyage, the master shall leave funds sufficient to cover the expenses of his treatment and maintenance.

*Article 1219.* If the sickness, wound or injury should have befallen the seaman while ashore without leave, he shall be entitled only to wages due; his treatment and maintenance shall be at his own expense, and he may further suffer dismissal for his fault if the master should deem it desirable in the interests of the ship.

## STATEMENT

On June 23, 1942, petitioner, a resident of New York (R. 19), entered the service[2] of the M/V "Jeff Davis" at the port of New York in the capacity of able-bodied seaman at a monthly wage of $182.50 (R. 9–10). The vessel was of Panamanian registry (R. 16) and was operated by the United States (R. 14). During the course of the voyage, petitioner sustained an injury to his right hand (R. 19). Petitioner was discharged from the vessel at the end of the voyage in Baltimore,

[2] The Shipping Articles are not part of the record of this case.

Maryland, on August 23, 1943 (R. 19). Thereafter, he applied to the Marine Hospital, New York City, for treatment of his hand, and on September 21, 1943, was sent to the Marine Hospital, Staten Island, where he was hospitalized (R. 19). He was discharged on October 23, 1943, and was referred back to the Marine Hospital, New York City for out-patient treatment (R. 19). On February 12, 1944, he was discharged because no further treatment was necessary (R. 19).

On January 31, 1944, petitioner filed a libel in the District Court for the Southern District of New York, against the United States for wages, cure and maintenance (R. 1, 3), alleging that, under the laws of the Republic of Panama, a seaman falling ill or being injured during the course of a voyage is entitled to wages, medical treatment and maintenance, at the expense of the vessel, until such time as he shall be cured (R. 5).[3] Recovery was sought in the sum of $15,000 (R. 8).[4] In support of his contention that under Section 1217 of the Panamanian Commercial Code, *supra,* an injured seaman is entitled not only to maintenance and cure from the time of his return to the

[3] The United States Lines, Inc., under contract with the United States to husband the vessel, was originally named as a respondent in the libel (R. 1, 14). On February 19, 1944, the action as to the ship's husband was dismissed by stipulation (R. 1, 14).

[4] No claim is made with reference to unseaworthiness or negligence (R. 15).

port of his employment[5] until the time of recovery, but also to wages for this period of time, petitioner introduced in evidence an English translation of the Panamanian Commercial Code (R. 20; *supra*, pp. 2–3). Petitioner did not offer any expert testimony on his own behalf, but was content to rest his interpretation of that statute, and hence his case, on the evidence in the record (R. 37–39, 43).

The Government denied that under the Panamanian Statute an injured seaman was entitled to wages until the time of his recovery where recovery occurred subsequent to his return to the port of his engagement, and argued that, under the statute, an injured seaman is entitled to wages until the date of his return to the port of his engagement (R. 10, 31). In support of its construction of the statute, the Government introduced an expert witness (R. 21),[6] who testified

[5] There is no issue as to the expenses of petitioner's return from Baltimore to New York City, the port of his engagement (R. 21, 45).

[6] The expert was the Panamanian consul in Philadelphia, a former instructor in Spanish at the University of Pennsylvania, and a member of the Pennsylvania Bar. He had studied Panamanian law in anticipation of being admitted to the Panama Bar, but was never admitted to practice in Panama because of his subsequent naturalization as an American citizen. He had considerable experience as an expert on foreign laws generally, and particularly on the Panamanian and other Latin American laws. (R. 21–23.) The witness' translation of Section 1217 of the Panamanian Code was:

"Any member of the crew who is ill, wounded or mutilated shall have the right not only to his wages until he recovers,

that the purpose of Section 1217 was to give seamen aboard Panamanian vessels the same right to wages enjoyed by seamen under the American law by reason of their signing shipping articles (R. 26).[7] The witness testified that the Panamanian Statute was derived from similar statutes of Columbia, Chile and Spain (R. 30); that it was the common purpose of these laws to preserve a seaman's right to his wages to the end of the voyage even though he be injured and disabled during it (R. 27–30); and that the intent of the Panamanian Statute was to preserve the seaman's right to wages while he remained on the vessel in a disabled condition during the voyage, and to give him, in addition thereto, his wages until he returned to his port of enrollment (R. 31).

The district court refused to accept petitioner's construction of the Panamanian Statute, and held that under either translation of Section 1217,[8] petitioner was entitled to wages only until the date he was paid off in Baltimore (R. 45).[9] The court

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but also until the day in which he may be back in the port of his engagement and he shall receive in addition a reasonable sum for the repatriation expenses" (R. 25).

[7] Under American law, the wage is required to be paid for the period of the voyage signed up for. *The Nyack*, 199 Fed. 383 (C. C. A. 7); *Chelentis* v. *Luckenbach S. S. Co.*, 243 Fed. 536 (C. C. A. 2); *Great Lakes S. S. Co.* v. *Geiger*, 261 Fed. 275 (C. C. A. 6); *Martinez* v. *Matson S. S. Co.*, 97 F. 2d 19 (C. C. A. 5); *Pacific Mail S. S. Co.* v. *Lucan*, 264 Fed. 938 (C. C. A. 9).

[8] See pp. 2–3, *supra* and footnote 6, *supra*, pp. 5–6.

[9] See footnote 5, *supra*, p. 5.

found that the expert's interpretation was correct and fully supported by consideration of the act (R. 45). It held that the fair intendment of Article 1217, and the only interpretation consistent with the ordinary meaning of wage as the agreed compensation for services, particularly since the provision for maintenance and cure was contained in the same statute, was to cover "* * * payment of wages to an injured seaman for his disability period during the voyage and further provides, if his injury or sickness required that he be put ashore, for a continuance of wages until his degree of recovery and the circumstances attending him in such port permits of his being returned to his home." (R. 45–46.) It awarded petitioner maintenance and cure for 141 days,[10] denied wages from any date after August 23, 1943 (R. 44), and entered judgment accordingly (R. 48).

Upon appeal, the court below held that the trial court had correctly interpreted and applied the statute. The court below recognized the right of a seaman to wages for the whole voyage even though he might be unable to work the ship but rejected petitioner's claim for indefinite sickness insurance at full pay as "certainly a purpose not gratuitously to be imputed to a maritime statute,

[10] Maintenance and cure was not allowed for the period from September 21 to October 23, 1943, during which petitioner was an in-patient at the Marine Hospital at Staten Island (R. 44).

in which it would be unique, so far as we know." (R. 57.) Accordingly, it affirmed the district court decree (R. 57).

## ARGUMENT

The narrow question presented by the petitioner is whether the law of Panama "is other than by the concurrent judgments of the courts below it has been here adjudged to be." *Shapleigh* v. *Mier*, 299 U. S. 468, 475. We submit that the judgments of both courts below are correct and that no review by this Court is warranted.

1. Petitioner contends that, by the obvious meaning of Section 1217 of the Panama Commercial Code, *supra*, an injured seaman is entitled to wages until the date of his recovery and that this right may not be limited to the period of the voyage. He urges that this view of Article 1217 is supported by the trial judge's instructions in a New York case, *Komaridis* v. *Compania Internacional de Vapores*, 1943 A. M. C. 1437 (N. Y. Sup. Ct.), and has been accepted by admiralty firms in New York City as a basis for disposing of seamen's claims against Panamanian vessels; and that the testimony of the Government's expert witness was merely unreasoned personal opinion, implying that it should not have been considered by the courts below (Pet. 15–18).

We perceive no merit to petitioner's argument. First, in *Komaridis* v. *Compania Internacional de Vapores, supra*, it does not appear that an issue

was presented as to the meaning of the Panamanian law in providing for wages "up to the time of recovery." Second, no weight can be attached to the unsupported assertion that petitioner's interpretation of Panamanian law has been concurred in by certain admiralty firms in New York City. Third, the courts below properly relied on the testimony of the expert witness in interpreting this foreign statute. *Slater* v. *Mexican National R. R. Co.*, 194 U. S. 120, 130; Wigmore, *Evidence* (3rd Ed. 1940) §§ 1271, 1953.[11]

It is the Government's position that the instant action is governed by the principle of *Shapleigh* v. *Mier, supra.* Petitioner placed in evidence an English translation of the applicable Panamanian law (R. 20). Nothing in the record, beyond petitioner's own allegations, supports his construction of this statute. No reference is made by petitioner to documents or other sources of information which rebut in any way the expert testimony offered by the Government.[12] Petitioner has entirely failed to meet the burden of proof placed upon those who rely upon foreign law. *Liver-*

[11] Article 5 of the Geneva Convention of October 6–24, 1936, 54 Stat. 1693, 1697, referred to by petitioner (Pet. 19), has little relevance where, as here, a national law controls the same subject matter.

[12] Such burden is clear in the circumstances of this case where, as observed by the court below, petitioner contends for a construction of Article 1217 which would work a radical transformation of the recognized rights of seamen (R. 57).

*pool Steam Co.* v. *Phoenix Ins. Co.*, 129 U. S. 397, 446. Accordingly, we submit that both courts below properly construed Article 1217 and that there is no occasion for review herein.

## CONCLUSION

There being no conflict among the circuits, and the decisions of both courts below being correct, the petition for a writ of certiorari should be denied.

GEORGE T. WASHINGTON,
*Acting Solicitor General.*
JOHN F. SONNETT,
*Assistant Attorney General.*
SAMUEL D. SLADE,
EMERY COX, JR.,
*Attorneys.*

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